

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36019

STATE OF IDAHO,)	2009 Unpublished Opinion No. 667
)	
Plaintiff-Respondent,)	Filed: November 12, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
MICHAEL ADAM CURTIS,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Gregory M. Culet, District Judge.

Appeal from order revoking probation and requiring execution of unified ten-year sentence with three-year determinate term for forgery, dismissed; order denying Idaho Criminal Rule 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge, GUTIERREZ, Judge
and GRATTON, Judge

PER CURIAM

Michael Adam Curtis was convicted of forgery, Idaho Code § 18-3601. The district court imposed a unified ten-year sentence with a three-year determinate term to run concurrently with sentences previously imposed in separate cases, but after a period of retained jurisdiction, suspended the sentence and placed Curtis on probation. Approximately three months later, following a report of probation violations, Curtis was given 30 days of discretionary jail time. Subsequently, he admitted to violating several terms of the probation, and the district court consequently revoked probation and ordered execution of the original sentence. Curtis filed an Idaho Criminal Rule 35 motion for reduction of the sentence which was denied. Curtis appeals,

contending that the district court abused its discretion in revoking probation and in denying his Rule 35 motion.

Curtis's attempted appeal from the order revoking probation is untimely because the notice of appeal was not filed within forty-two days of the order. *See* Idaho Appellate Rule 14; *State v. Yeaton*, 121 Idaho 1018, 1019, 829 P.2d 1367, 1368 (Ct. App. 1992). The timely filing of a notice of appeal is necessary in order to confer jurisdiction on the appellate court. *Id.* Therefore, Curtis's appeal from the order revoking probation is dismissed.

A motion for reduction of a sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 159 P.3d 838 (2007). In conducting our review of the grant or denial of a Rule 35 motion, we consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence. *State v. Forde*, 113 Idaho 21, 22, 740 P.2d 63, 64 (Ct. App. 1987); *Lopez*, 106 Idaho 447, 680 P.2d 869.

Having reviewed the record, we conclude that the district court did not abuse its discretion in denying Curtis's Rule 35 motion for reduction of sentence. Therefore, the order denying Curtis's Rule 35 motion is affirmed.